

DEPARTMENT OF HUMAN SERVICES PRIVATIZATION GUIDELINES

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Background

Definition

Privatization is the action by a state agency to contract with the profit or non-profit sector to perform functions and services, or purchase products.

Management Tool

Privatization can be used as a management tool to weigh the possible options and opportunities to structure and focus the department's resources. Privatization has the potential to increase the quality of services and it can help an agency focus on those work activities that represent its mission, expertise, or skill. By contracting out certain functions, an agency can better focus its management attention on critical matters and at the same time use private providers to bring high quality performance to other functions.

Planning

The first task each division/office must undertake in considering private sector contracting is to decide if privatization is the most appropriate course of action to maximize resources and provide quality services to clients. Each division/office must carefully determine the types and scope of services and products to be privatized. The decision to privatize should not be driven by a narrow consideration of cost savings alone. The state's responsibility to its clients and citizens requires that a decision be based on sound planning and a balanced, comprehensive feasibility assessment. The final decision to privatize a service should be based on a multitude of factors. A single factor should not be used in isolation to support or reject a privatization effort.

Community and Stakeholder Involvement

Since privatization can change the way the department conducts its business, those affected by the change should participate in shaping the process. Early stakeholder involvement not only helps build support for the decision, it can be a key source of innovative ideas to enhance the success of privatization. Civic and business organizations, neighborhoods, advocacy groups, citizens, and consumers should be contacted and asked for their opinions and feedback. Legislative and political leaders should also be contacted to determine their viewpoint and priorities.

Worker Transition

While privatization efforts may lead to workforce restructuring and downsizing, they also can translate into new opportunities for workers and communities. The department should seek to mitigate the negative economic and social impacts that may result from privatization. When appropriate, workers whose jobs would be affected by privatization may be allowed to compete to retain the work in-house by improving performance and lowering costs. The department will also encourage private providers to hire state staff.

Feasibility Assessment

Divisions/offices will use the following in determining the feasibility of privatizing services or purchasing products.

Quality of Service

❖ Will the efficiency and quality of the services be equivalent or improved?

The desire to improve the quality of a service that is currently publicly provided is often a significant reason for contracting that service to the private sector. At times, the private sector has a greater potential for innovation and efficiency due to its ability to be more flexible than government regarding personnel and resources, and is less burdened with bureaucracy and red tape. Contracting may offer the state the ability to respond to immediate needs with greater flexibility and speed than is possible under government operation.

To determine if private providers can deliver a service of better or equal quality, divisions/offices must gather data regarding the level of performance the state agency has achieved in meeting client outcomes and performance indicators. Divisions/offices should emphasize outcome based performance standards for all private providers and develop performance based contracts. The current focus on monitoring only process variables does not provide the state with information to adequately assess the quality of services provided by contractors or the state.

There is nothing uniquely inherent in the private sector that assure it will always do the job better or at the same level of quality. The state should consider if it is possible to improve or maintain the present quality of service. The obstacles to improving the public operation should be identified and the ability of the private sector to overcome these obstacles should be determined.

Competition

❖ Are services readily available from several competing private companies or other organizations?

Privatization efforts should harness competition to enhance performance and maximize returns to taxpayers. The competitive forces of the market place can improve efficiency, challenge new players to participate, and often lead to innovative approaches and technologies.

Privatization in a non-competitive environment can result in reliance on a single provider. A sole source provider may have no competitive pressure to improve the efficiency of its operation, maintain quality, or reduce costs. The department should strive to research and seek competitive bids in compliance with the State's purchasing policies and procedures. In circumstances where efforts to create a competitive environment are unsuccessful, the department will look to other criteria to achieve efficiency and cost effectiveness.

Legal Authority

❖ Is the ability of the state agency to perform its statutory mission hampered or restricted?

Each division/office must determine the areas of operation that should remain predominately or exclusively operated by the state. This process should include a review of statutes to determine if privatization conflicts with the agency's legal mission, if the agency has the legal authority to privatize the service, and if privatization does away with an "essential role of government." Some of the factors in determining the "essential role of government" may include the degree to which the service must

be provided in a consistent manner across the state in order to assure equitable access and treatment, meet federal mandates and standards, and if state intervention is required for the client to pursue the basic rights to life and liberty.

Cost

❖ Will costs to the taxpayer will be reduced or equivalent?

Privatization can be a vehicle to reduce costs and increase competition and efficiency. To determine if the service can be performed at a lower cost by the private sector, a comprehensive comparative analysis of the total cost of the service for both the state agency and the private sector should be undertaken. The analysis will include the costs for monitoring and negotiating the contract for both state and private providers, and operating costs, taxes, and profit for the private providers, for the estimated time frame established for this contract.

Implementation

The following are technical issues the divisions/offices should address in order to implement privatization efforts.

Request for Proposals (RFP) and Contract Negotiation Procedures

❖ Does the RFP and the contract clearly state the purpose of the work to be performed and the level of performance and results expected?

The level of control the state exerts over its providers is directly related to how well the divisions/offices structure the RFP and the final contract. The RFP and contract should emphasize the purpose of the work to be performed as opposed to the manner in which the work is performed. The contract should describe the specific outcomes and the level of performance the contractor is expected to achieve. In this manner an objective assessment of contractor performance and contract compliance can be determined. The incorporation of high, but achievable, outcomes into the contract and RFP is essential for proper public accountability.

Data Collection and Contract Monitoring

❖ Does the division/office have the necessary systems in place to collect and utilize data to measure provider performance and monitor compliance in meeting contract requirements and quality standards?

The shift from operating public services to monitoring the provision of public services requires a clear analysis of the state's ability and resources to oversee and evaluate provider performance. Divisions/offices must have the capacity to adequately collect data and reports on program performance and utilize the data to monitor contract compliance.

Evaluation

The following areas should be addressed to ensure accountability and assess the performance of the contractor.

Outcome Measurement

❖ Do divisions/offices have performance standards and client outcomes that are measurable and ensure quality?

Divisions/offices must develop performance measures and client outcomes that go beyond asking "how much service was delivered" to "how effective the service was delivered and the impact on the

client's needs and/or service requirements." A baseline should be determined for each performance measure and outcome based on prior performance. A targeted performance level can be established as a minimum level of performance to be achieved by the contractor. The state can test the performance level of the provider against the baseline and the targeted level. The feedback from measuring provider performance can be used to improve provider services, focus reimbursement on services "that work," and provide information for planning and budgeting.

Contract Monitoring

❖ How will contracts be monitored to protect the public from incompetence and misuse of funds, and to ensure contract accountability?

Divisions/offices must develop and utilize monitoring protocols which assess the contractors compliance with quality standards, verify performance levels for outcomes, and determine that payment is made for services that meet targeted performance levels. Good contract administration is essential to ensure accountability and requires cooperation between program, licensing, monitoring, and fiscal staff. Organizational barriers that will prevent or inhibit a teamwork approach to contract monitoring and accountability should be identified and addressed.

Contract Renewal

❖ How will the divisions/offices use judicious rebidding and renewal procedures, and data from monitoring and performance and outcomes evaluation be used to ensure continued performance by the provider?

The costs of private sector services can escalate once vendors become established, particularly if the department has dismantled its own service delivery capability. Safeguards must be established to prevent this. The divisions/offices must carefully evaluate costs and specifically determine the work to be performed by the contractor. The providers must be required to adhere to the negotiated contractual rates for the full term of the contract. In addition, the department must ensure competitive bidding conditions in subsequent years so that other providers have a fair and reasonable chance to seek the contract. In some instances the department may choose to return the service delivery to a specified department or division within state government due to the loss of cost effectiveness and quality. The data gathered from program monitoring, performance and outcome measures should be used in decision making regarding contract renewal and funding levels.

Summary Questions for Each Previous Section

BACKGROUND

- Has the division/office determined the products and services that are appropriate to privatize?
- Has the division/office identified the barriers to improving the state delivery of services and determined the ability of the private sector to overcome these obstacles?
- Is the private sector willing to hire displaced state employees?
- What plans have state employees developed in order to retain the work in-house? Do the plans improve performance and/or lower costs?

FEASIBILITY ASSESSMENT

Quality of Service

- Does the private sector have the ability to substantially improve or maintain the same high quality of currently available services?
- Is the private provider planning to bring real improvements and innovations to the delivery of the service?
- Can the private provider implement the service quicker and with less red tape than the state?
- Does the private sector have the personnel and expertise the state is lacking?
- How will the private provider reduce the impact of shifting the client from one provider to another?
- Does the division/office have the ability to gather data on client outcomes and other performance indicators?

Competition

- Are there sufficient market pressures to sustain improvements in the delivery of the service over the long term?
- Does competition exist in the private sector or other governmental sector to provide the service?

Agency Mission

- Does privatization fit with the goals and mission of the agency?
- Will privatization enhance the services already provided by the state?
- Does the agency have the legal authority to privatize?

Community and Stakeholder Attitudes

- How do the affected members of the community feel about privatizing the services?

Political Environment

- What are the legislative and political opinions and concerns regarding privatization?
- What are the agency's motives for privatization?

Cost

- How will accurate operational costs, including monitoring and contracting costs, be determined? Who will be responsible for the analysis?
- How will cost comparisons take into consideration clients that are "more difficult" to serve?

IMPLEMENTATION

- What are the performance or results based outcomes the agency will use to evaluate provider performance?
- How will the state maintain control over the delivery and quality of the service?
- How will staff be trained to monitor outcomes?

EVALUATION

- How will judicious rebidding and renewal procedures be used to ensure continued performance by the provider?
- How will frequent onsite inspections be conducted?
- How will operating costs be compared and evaluated?
- How will the division/office and the providers collect and analyze data to evaluate the outcomes?
- How will the data from monitoring of costs and client outcomes be used in decision making regarding contract renewal, determining funding levels, improving provider performance and planning?

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Date